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AN ACT

RELATING TO PUBLIC UTILITIES; PROVIDING FOR SIMULTANEOUS
DETERMINATION OF RATEMAKING PRINCIPLES AND PUBLIC CONVENIENCE
AND NECESSITY; AUTHORIZING UTILITIES TO FILE APPLICATIONS OF
PUBLIC CONVENIENCE AND NECESSITY BEFORE FILING APPLICATIONS
FOR LOCATION APPROVAL; ESTABLISHING FACTORS TO BE CONSIDERED
WHEN APPROVING APPLICATIONS FOR LOCATION APPROVAL; PROVIDING
DEADLINES FOR APPROVAL OF APPLICATIONS; ALLOWING APPROVAL OF
APPLICATIONS WITHOUT A FORMAL HEARING; PRESCRIBING USE OF
RATEMAKING PRINCIPLES AND TREATMENTS IN ALL PROCEEDINGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 62-9-1 NMSA 1978 (being Laws 1941,
Chapter 84, Section 46, as amended) is amended to read:

"62-9-1. NEW CONSTRUCTION--RATEMAKING PRINCIPLES.--

A. No public utility shall begin the construction
or operation of any public utility plant or system or of any
extension of any plant or system without first obtaining from
the commission a certificate that public convenience and
necessity require or will require such construction or
operation. This section does not require a public utility to
secure a certificate for an extension within any municipality
or district within which it lawfully commenced operations
before June 13, 1941 or for an extension within or to
territory already served by it, necessary in the ordinary

1 course of its business, or for an extension into territory
2 contiguous to that already occupied by it and that is not
3 receiving similar service from another utility. If any
4 public utility or mutual domestic water consumer association
5 in constructing or extending its line, plant or system
6 unreasonably interferes or is about to unreasonably interfere
7 with the service or system of any other public utility or
8 mutual domestic water consumer association rendering the same
9 type of service, the commission, on complaint of the public
10 utility or mutual domestic water consumer association
11 claiming to be injuriously affected, may, upon and pursuant
12 to the applicable procedure provided in Chapter 62, Article
13 10 NMSA 1978, and after giving due regard to public
14 convenience and necessity, including reasonable service
15 agreements between the utilities, make an order and prescribe
16 just and reasonable terms and conditions in harmony with the
17 Public Utility Act to provide for the construction,
18 development and extension, without unnecessary duplication
19 and economic waste.

20 B. If a certificate of public convenience and
21 necessity is required pursuant to this section for the
22 construction or extension of a generating plant or
23 transmission lines and associated facilities, a public
24 utility may include in the application for the certificate a
25 request that the commission determine the ratemaking

1 principles and treatment that will be applicable for the
2 facilities that are the subject of the application for the
3 certificate. If such a request is made, the commission
4 shall, in the order granting the certificate, set forth the
5 ratemaking principles and treatment that will be applicable
6 to the public utility's stake in the certified facilities in
7 all ratemaking proceedings on and after such time as the
8 facilities are placed in service. The commission shall use
9 the ratemaking principles and treatment specified in the
10 order in all proceedings in which the cost of the public
11 utility's stake in the certified facilities is considered.
12 If the commission later decertifies the facilities, the
13 commission shall apply the ratemaking principles and
14 treatment specified in the original certification order to
15 the costs associated with the facilities that were incurred
16 by the public utility prior to decertification.

17 C. The commission may approve the application for
18 the certificate without a formal hearing if no protest is
19 filed within sixty days of the date that notice is given,
20 pursuant to commission order, that the application has been
21 filed. The commission shall issue its order granting or
22 denying the application within nine months from the date the
23 application is filed with the commission. Failure to issue
24 its order within nine months is deemed to be approval and
25 final disposition of the application; provided, however, that

1 the commission may extend the time for granting approval for
2 an additional six months for good cause shown.

3 D. As used in this section, "mutual domestic water
4 consumer association" means an association created and
5 organized pursuant to the provisions of:

6 (1) Laws 1947, Chapter 206; Laws 1949,
7 Chapter 79; or Laws 1951, Chapter 52; or

8 (2) the Sanitary Projects Act."

9 Section 2. Section 62-9-3 NMSA 1978 (being Laws 1971,
10 Chapter 248, Section 1, as amended) is amended to read:

11 "62-9-3. LOCATION CONTROL--LIMITATIONS.--

12 A. The legislature finds that it is in the public
13 interest to consider any adverse effect upon the environment
14 and upon the quality of life of the people of the state that
15 may occur due to plants, facilities and transmission lines
16 needed to supply present and future electrical services. It
17 is recognized that such plants, lines and facilities will be
18 needed to meet growing demands for electric services and
19 cannot be built without in some way affecting the physical
20 environment where these plants, facilities and transmission
21 lines are located. The legislature therefore declares that
22 it is the purpose of this section to provide for the
23 supervision and control by the commission of the location
24 within this state of new plants, facilities and transmission
25 lines for the generation and transmission of electricity for

1 sale to the public.

2 B. No person, including any municipality, shall
3 begin the construction of any plant designed for or capable
4 of operation at a capacity of three hundred thousand
5 kilowatts or more for the generation of electricity for sale
6 to the public within or without this state, whether or not
7 owned or operated by a person that is a public utility
8 subject to regulation by the commission, or of transmission
9 lines in connection with such a plant, on a location within
10 this state unless the location has been approved by the
11 commission. For the purposes of this section, "transmission
12 line" means any electric transmission line and associated
13 facilities designed for or capable of operations at a nominal
14 voltage of two hundred thirty kilovolts or more, to be
15 constructed in connection with and to transmit electricity
16 from a new plant for which approval is required.

17 C. Application for approval shall contain all
18 information required by the commission to make its
19 determination, be made in writing setting forth the facts
20 involved and be filed with the commission. The commission
21 shall, after a public hearing and upon notice as the
22 commission may prescribe, act upon the application. The
23 commission may condition its approval upon a demonstration by
24 the applicant that it has received all necessary air and
25 water quality permits. A public utility regulated by the

1 commission may submit an application pursuant to Section
2 62-9-1 NMSA 1978 for a certificate of public convenience and
3 necessity prior to filing an application for location
4 approval pursuant to this section in order to determine the
5 need for the generating plant or transmission line prior to
6 determination of the appropriate location.

7 D. No approval shall be required for additions to
8 or modifications of an existing plant or transmission line.

9 E. The commission shall approve the application
10 for the location of the generating plant unless the
11 commission finds that the operations of the facilities for
12 which approval is sought will not be in compliance with all
13 applicable air and water pollution control standards and
14 regulations existing. The commission shall not require
15 compliance with performance standards other than those
16 established by the agency of this state having jurisdiction
17 over a particular pollution source.

18 F. The commission shall approve the application
19 for the location of the transmission lines unless the
20 commission finds that the location will unduly impair
21 important environmental values.

22 G. No application shall be approved pursuant to
23 this section that violates an existing state, county or
24 municipal land use statutory or administrative regulation
25 unless the commission finds that the regulation is

1 unreasonably restrictive and compliance with the regulation
2 is not in the interest of the public convenience and
3 necessity, in which event and to the extent found by the
4 commission the regulation shall be inapplicable and void as
5 to the siting. When it becomes apparent to the commission
6 that an issue exists with respect to whether a regulation is
7 unreasonably restrictive and compliance with the regulation
8 is not in the interest of public convenience and necessity,
9 it shall promptly serve notice of that fact by certified mail
10 upon the agency, board or commission having jurisdiction for
11 land use of the area affected and shall make the agency,
12 board or commission a party to the proceedings upon its
13 request and shall give it an opportunity to respond to the
14 issue. The judgment of the commission shall be conclusive on
15 all questions of siting, land use, aesthetics and any other
16 state or local requirements affecting the siting.

17 H. A public utility subject to the jurisdiction of
18 the commission may elect to file an application pursuant to
19 this section with the commission for location approval of an
20 electric transmission line or associated facilities designed
21 for or capable of operation at a nominal voltage of one
22 hundred fifteen kilovolts or more but less than two hundred
23 thirty kilovolts if:

24 (1) the public utility files an application
25 for construction, extension, rebuilding or improvement of the

1 electric transmission line or associated equipment under any
2 applicable county or municipal land use statute, ordinance or
3 administrative regulation; and

4 (2) the agency, board or commission of the
5 county or municipality disapproves the application. For
6 purposes of this subsection, "disapprove" means the failure
7 of the county or municipal agency, board or commission to
8 issue a final order approving the application within two
9 hundred forty days of the public utility's filing of a
10 complete application with the agency, board or commission.

11 An application shall be deemed complete if within fifteen
12 working days of the public utility's filing of the
13 application, or a supplement or amendment thereto, the
14 agency, board or commission fails to send written notice to
15 the public utility enumerating the specific requirements
16 under the applicable county or municipal land use statute,
17 ordinance or administrative regulation that the application
18 fails to satisfy.

19 I. Upon consideration of the application and the
20 standards set forth in Subsection G of this section, the
21 commission may authorize construction, extension, rebuilding
22 or improvement of the transmission line or facilities
23 notwithstanding the prior disapproval of the county or
24 municipal agency, board or commission. The judgment of the
25 commission shall be conclusive on all questions of siting,

1 land use, aesthetics and any other state or local
2 requirements affecting the siting.

3 J. Nothing in this section shall be deemed to
4 confer upon the commission power or jurisdiction to regulate
5 or supervise any person, including a municipality, that is
6 not otherwise a public utility regulated and supervised by
7 the commission, with respect to its rates and service and
8 with respect to its securities, nor shall any other provision
9 of the Public Utility Act be applicable with respect to such
10 a person, including a municipality.

11 K. The commission may approve an application filed
12 pursuant to this section without a formal hearing if no
13 protest is filed within sixty days of the date that notice is
14 given that the application has been filed. The commission
15 shall issue its order granting or denying the application
16 within six months from the date the application is filed with
17 the commission; provided, however, that:

18 (1) if a public utility simultaneously files
19 an application for approval of location of a transmission
20 line pursuant to this section and an application for a
21 certificate of public convenience and necessity pursuant to
22 Subsection B of Section 62-9-1 NMSA 1978, the commission
23 shall issue its order granting or denying the applications
24 within nine months from the date the applications are filed
25 with the commission; provided, however, that the commission

1 may extend the time for granting approval an additional six
2 months for good cause shown;

3 (2) if a public utility files an application
4 for approval of location of a transmission line pursuant to
5 this section after its application for a certificate of
6 public convenience and necessity has been approved pursuant
7 to Subsection B of Section 62-9-1 NMSA 1978, the commission
8 shall issue its order granting or denying the application for
9 approval of location of a transmission line within ninety
10 days from the date the application is filed with the
11 commission; and

12 (3) if a public utility files an application
13 for approval of location of a transmission line pursuant to
14 this section while its application for a certificate of
15 public convenience and necessity is pending pursuant to
16 Subsection B of Section 62-9-1 NMSA 1978, and the application
17 for a certificate is subsequently approved, the commission
18 shall issue its order granting or denying the application for
19 approval of location of a transmission line within ninety
20 days from the date the application for certificate of public
21 convenience and necessity is approved.

22 L. Failure to issue its order approving or denying
23 an application filed pursuant to this section within the time
24 periods set forth in Subsection J of this section is deemed
25 to be approval of the application; provided, however, that

1 the commission may extend the time for granting approval for
2 a transmission line that is subject to this section for an
3 additional nine months upon finding that the additional time
4 is necessary to determine if the proposed location of the
5 line will unduly impair important environmental values.

6 M. In determining if the proposed location of the
7 transmission line will unduly impair important environmental
8 values, the commission may consider the following factors;

9 (1) existing plans of the state, local
10 government and private entities for other developments at or
11 in the vicinity of the proposed location;

12 (2) fish, wildlife and plant life;

13 (3) noise emission levels and interference
14 with communication signals;

15 (4) the proposed availability of the
16 location to the public for recreational purposes, consistent
17 with safety considerations and regulations;

18 (5) existing scenic areas, historic,
19 cultural or religious sites and structures or archaeological
20 sites at or in the vicinity of the proposed location; and

21 (6) additional factors that require
22 consideration under applicable federal and state laws
23 pertaining to the location."

24 Section 3. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2005. _____